

Message Text

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ACTION L-03

INFO OCT-01 EUR-25 ADP-00 SCA-01 JUSE-00 CIAE-00 INR-10

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----- 120474

R 161235Z AUG 73

FM AMEMBASSY MADRID

TO SECSTATE WASHDC 6443

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E.O. 11652: N/A

TAGS: CGEN SP

SUBJECT: SUPPLEMENTARY EXTRADITION TREATY

REFS: (A) MADRID 2646 OF JUNE 8, 1972

(B) STATE A-4985 OF MAY 17, 1972

1. FOLLOWING SEVERAL EMBASSY APPROACHES RE STATUS OF PROPOSAL FOR SUPPLEMENTARY EXTRADITION TREATY MADE PURSUANT REF B, MFA HAS SENT REPLY IN NOTE DATED AUGUST 3.

2. NOTE AGREES TO PROPOSED EXTENSION OF PERIOD OF PREVENTIVE DETENTION AND SUBMITS FOR OUR CONSIDERATION FOLLOWING VIEWS OF MINISTRY OF JUSTICE: IT IS SENSIBLE TO EXTEND PERIOD TO 45 DAYS SINCE THIS PERIOD IS NOT EXCESSIVE IN RELATION TO PERIODS ESTABLISHED IN OTHER EXTRADITION TREATIES TO WHICH SPAIN IS A PARTY AND IN VIEW OF DIFFICULTIES OF COMPLETING EXTRADITION REQUEST FORMALITIES IN 30 DAYS, AND MINISTRY WOULD EVEN NOT BE OPPOSED TO EXTENDING THE LIMIT TO 60 DAYS. WITHOUT PREJUDICE TO THIS POSITION, THE MINISTRY POINTS OUT THAT (A) IT WOULD BE APPROPRIATE TO SET FORTH PRECISELY WHETHER THE PERIOD IS TO BE COUNTED FROM THE MOMENT OF DETENTION OR FROM THE MOMENT IN WHICH THE FACT OF THE DETENTION IS COMMUNICATED BY DIPLOMATIC MEANS; AND (B) IT IS A MATTER OF JUSTICE THAT THE DURATION OF THE PREVENTIVE DETENTION FOR PURPOSES OF EXTRADITION BE

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CREDITED TO THE FULFILLMENT OF THE PUNISHMENT WHICH

MAY BE IMPOSED OR WHICH HAS BEEN IMPOSED BY A DEFINITE SENTENCE OF THE PERSON EXTRADITED, AND THIS SHOULD BE EXPRESSLY AGREED.

3. RE: JUSTICE MINISTRY'S AMENABILITY TO EXTENDING PREVENTIVE DETENTION PERIOD TO 60 DAYS, EMBASSY CONSIDERS 45-DAY PERIOD ADEQUATE.

4. RE POINT 2(A) ABOVE: WHILE ARTICLE XI.D. OF THE EXTRADITION TREATY SPECIFIES THAT THE PERIOD OF PREVENTIVE DETENTION DATES FROM THE TIME OF ARREST, THIS EMBASSY WOULD PREFER CHANGING THE ARTICLE TO PROVIDE THAT THE PERIOD WILL DATE FROM THE TIME OF THE DIPLOMATIC COMMUNICATION OF THE DETENTION.

5. RE POINT 2(B): WE FIND NOTHING IN THE EXISTING EXTRADITION TREATY WHICH RELATES TO APPLYING THE PERIOD OF PREVENTIVE DETENTION TO FULFILLMENT OF THE SENTENCE IMPOSED ON THE PERSON EXTRADITED. HOWEVER, WE BELIEVE THAT THE MFA'S POINT IS WELL TAKEN AND THAT IT WOULD BE DESIRABLE TO INCORPORATE SUCH A PROVISION IN THE TREATY.

6. REQUEST GUIDANCE IN RESPONDING TO THE POINTS RAISED IN THE MFA NOTE.

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